



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

**AUG 31 2004**

**Friends of Marilyn F. O'Grady  
Thomas Keller, Treasurer  
111 Seventh Street  
Garden City, NY 11530-5731**

**RE: MURs 5334, 5341 and 5524  
Friends of Marilyn F. O'Grady  
and Thomas Keller, as treasurer**

**Dear Mr. Keller:**

On November 21, 2002 and December 4, 2002, the Federal Election Commission ("the Commission") notified Friends of Marilyn F. O'Grady and you, as treasurer ("the Committee") of two complaints, respectively, alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). Copies of the complaints were forwarded to you at those times.

Upon further review of the allegations contained in the complaint, and information supplied by you, as well as other information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, the Commission found on August 27, 2004 that there is reason to believe the Committee and you, as treasurer, violated 2 U.S.C. §§ 433(a); 434(a)(2)(A)(i) and (iii); 434(a)(6)(A); 434(a)(11); 434(b), 434(b)(1), (2), (3) and (4); 434(b)(8); 441b; 441a(f); 441d(a)(1); and 11 C.F.R. §§ 103.4(b)(4); 104.3(d); 104.11(a); 104.18(a)(1) and (2). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Daniel G. Pinegar, the staff attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Ellen L. Weintraub  
Vice-Chair

Enclosures:

Designation of Counsel Form  
Factual and Legal Analysis  
Procedures

cc: Marilyn F. O'Grady

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**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Friends of Marilyn F. O'Grady and Thomas Keller, as treasurer

**MURs:** 5334, 5341, 5524

**I. GENERATION OF MATTER**

This case was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities and by complaints filed with the Commission by Friends of Carolyn McCarthy (MUR 5334) and Jay S. Jacobs, Chairman of Nassau County Democratic Committee (MUR 5341). *See* 2 U.S.C. § 437g(a)(1), (2).

**II. FACTUAL AND LEGAL ANALYSIS<sup>1</sup>**

**A. Introduction**

Dr. Marilyn O'Grady, a first-time federal candidate, ran for a U.S. House of Representatives seat in New York's 4th Congressional district in 2002. She won her September 10, 2002 primary election, but lost to Carolyn McCarthy in the general election on November 5, 2002.

From the beginning of O'Grady's campaign, her authorized political committee, Friends of Marilyn O'Grady ("the Committee"), had compliance problems. O'Grady became a candidate

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<sup>1</sup> All of the facts recounted in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act are prior to the effective date of BCRA and all citations to the Commission's regulations are to the 2002 edition of Title 11, Code of Federal Regulations, published prior to the Commission's promulgation of any regulations under BCRA.

1 when she passed the \$5,000 contribution/expenditure threshold on February 21, 2002. 2 U.S.C.  
2 § 431(2). O'Grady filed her Statement of Candidacy, designating the Committee as her  
3 authorized campaign committee on March 5, 2002;<sup>2</sup> the Committee then untimely filed its  
4 Statement of Organization 16 days later on March 21, 2002. 11 C.F.R. § 104.1. Thereafter, the  
5 Committee failed to file its 2002 April Quarterly Report until 2004, failed to timely file its 12-  
6 Day Pre-Primary and Pre-General Election Reports as well as several 48-Hour notices, and  
7 initially filed all other reports on paper, even though the threshold for electronic filing had been  
8 triggered. The Committee did not electronically file its reports with the Commission until it  
9 received several requests for additional information ("RFAs") and was assisted by the Reports  
10 Analysis Division in correcting problems it had in understanding how to properly use FEC File  
11 software. Beginning with its 2002 October Quarterly Report, the Committee electronically filed  
12 its reports with the Commission.

13 During the course of the campaign, the Committee received a total of \$255,000 in eight  
14 separate loans from accounts of the candidate or the candidate's spouse, John F. O'Grady,  
15 beginning with a \$50,000 loan from the candidate on March 22, 2002. These loans and the filing  
16 problems noted above comprise a significant part of the alleged reporting violations discussed in  
17 this Report. The Committee also allegedly accepted a number of excessive and prohibited  
18 contributions.

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<sup>2</sup> This document was dated February 10, 2002. A copy of the Statement of Candidacy was also hand-delivered to the Commission on March 21, 2002.

1 The Commission authorized an audit of the Committee pursuant to 2 U.S.C. § 438(b),  
2 covering the period of January 15, 2002 – December 31, 2002.<sup>3</sup> The Commission approved the  
3 Final Audit Report on March 22, 2004. The Committee has since filed several amended reports  
4 with the Commission as a result of the audit process.

5 The complaint in MUR 5341 alleged that the Committee failed to timely file its 2002  
6 April Quarterly and 12-Day Pre-Primary Election Reports, failed to timely report two candidate  
7 loans on Schedule C, and failed to file reports electronically after its receipts exceeded \$50,000.  
8 That complaint also included allegations that the Committee failed to accurately report  
9 expenditures for the purchase of certain television advertisements and failed to place required  
10 disclaimers on a letter allegedly from "Alumni for O'Grady." Likewise, the complaint in MUR  
11 5334 alleged that the Committee failed to place a required disclaimer on a leaflet that may have  
12 been distributed to over 50,000 people. In addition, the MUR 5334 complaint alleged that the  
13 Committee, in its late-filed Pre-General Report, disclosed what appear to be excessive  
14 contributions from six contributors. MUR 5334, Complaint at 1.

15 The Final Audit Report included several findings against the Committee: (1) the  
16 misstatement of financial activity by understating receipts by \$62,374, the largest element of  
17 which was a candidate loan of \$55,000, and understating disbursements by \$89,425, the largest  
18 element of which involved failing to report media services costing \$85,135 (including what  
19 appears to be payments for the television advertisements referenced in MUR 5341); (2) receipt of  
20 prohibited corporate contributions totaling \$9,195; (3) receipt of excessive contributions from the  
21 candidate's spouse (originally reported as a candidate loan) totaling \$23,000; (4) failure to

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<sup>3</sup> The Commission voted to undertake the audit on April 22, 2003 and fieldwork in Garden City, NY was conducted July 28, 2003 to August 8, 2003.

1 disclose two candidate loans, totaling \$55,000; and (5) failure to file 48-Hour notices for eight  
2 contributions totaling \$85,000 (\$80,000 of which were loans from the candidate or her spouse).

3 **B. Statement of Organization (2 U.S.C. § 433(a))**

4 Each authorized political campaign committee must file a statement of organization no  
5 later than ten days after being designated as such in a candidate's Statement of Candidacy.  
6 2 U.S.C. § 433(a). O'Grady filed her Statement of Candidacy, designating the Committee as her  
7 authorized campaign committee on March 5, 2002, but the Committee did not file its Statement  
8 of Organization until March 21, 2002 – six days late.<sup>4</sup> Therefore, there is reason to believe that  
9 Friends of Marilyn F. O'Grady and Thomas Keller, as treasurer, violated 2 U.S.C. § 433(a).

10 **C. Timely Filing Issues (2 U.S.C. § 434(a))**

11 **1. 2002 April Quarterly Report (MUR 5341)**

12 The treasurer of a political committee must file reports of all receipts and disbursements  
13 in accordance with the Act. 2 U.S.C. § 434(a)(1). A committee is required to file a quarterly  
14 report no later than the 15<sup>th</sup> day after the last day of each calendar quarter in any election year  
15 during which there is a regularly scheduled election for which the candidate is seeking election.  
16 2 U.S.C. § 434(a)(2)(A)(iii). The MUR 5341 complaint alleged that the Committee, based on  
17 contributions and receipts and the filing of a Statement of Organization during the first quarter of  
18 2002, was required to file a 2002 April Quarterly Report.

19 The Committee reported that it had raised more than \$5,000 in contributions as of  
20 February 21, 2002, and therefore Marilyn O'Grady crossed the "candidate" threshold set forth in  
21 2 U.S.C. § 431(2)(B) during the first quarter of 2002. 2002 July Quarterly Report. The

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<sup>4</sup> The late filing of the Committee's Statement of Organization was not asserted in either complaint or the audit referral; this Office raises the issue after reviewing the Committee's reports.

1 candidate filed her Statement of Candidacy on March 5, 2002. Though late, the Committee then  
2 filed its Statement of Organization on March 21, 2002. Accordingly, the Committee was  
3 required to file the next report due, which was the 2002 April Quarterly Report, due on April 15,  
4 2002. It did not.

5 The Committee admitted in its response that the "required filing for the first quarter 2002  
6 was not made and in retrospect, should have been filed." MUR 5341, Committee Response at 1.  
7 The Committee filed the 2002 April Quarterly Report electronically on February 10, 2004, after  
8 the completion of the Commission's audit and nearly 22 months late. Therefore, there is reason  
9 to believe that Friends of Marilyn F. O'Grady and Thomas Keller, as treasurer, violated 2 U.S.C.  
10 § 434(a)(2)(A)(iii).

11 **2. 12-Day Pre-Primary Report (MUR 5341)**

12 The treasurer of a political committee must file reports of all receipts and disbursements  
13 in accordance with the Act. 2 U.S.C. § 434(a)(1). A committee is required to file a pre-election  
14 report no later than the 12<sup>th</sup> day before any election in which the candidate is seeking election.  
15 2 U.S.C. § 434(a)(2)(A)(i). The MUR 5341 complaint alleged that the Committee filed its  
16 12-Day Pre-Primary Report late.

17 For O'Grady's September 10, 2002 primary, the Committee's 12-Day Pre-Primary  
18 Report was due on August 29, 2002 and should have covered the period of July 1, 2002 through  
19 August 21, 2002. The Committee submitted this report on paper on August 30, 2002; the report  
20 covered the period of July 1, 2002 through August 30, 2002. The Committee stated in its  
21 response that the one-day delay in filing this report was "inadvertent" and due to its  
22 "inexperience with filings." MUR 5341, Committee Response at 1. Although required to do so,

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1 *see* discussion *infra*, the Committee did not electronically file its 12-Day Pre-Primary Report,  
2 (covering the correct reporting period) until November 1, 2002.

3 Accordingly, there is reason to believe that Friends of Marilyn F. O'Grady and Thomas  
4 Keller, as treasurer, violated 2 U.S.C. § 434(a)(2)(A)(i).

5 **3. 12-Day Pre-General Election Report (MUR 5334)**

6 The MUR 5334 complaint alleged that the Committee also filed its 12-Day Pre-General  
7 Election Report late.<sup>5</sup> For O'Grady's November 5, 2002 general election race, the Committee's  
8 12-Day Pre-General Election Report was due no later than October 24, 2002. The Commission  
9 notified the Committee by Western Union MailGram dated October 25, 2004 that this report was  
10 late. On October 28, 2002, the Committee electronically filed its Pre-General Election Report,  
11 four days late.

12 Accordingly, there is reason to believe that Friends of Marilyn F. O'Grady and Thomas  
13 Keller, as treasurer, violated 2 U.S.C. § 434(a)(2)(A)(i).

14 **4. 48-Hour Notices**

15 When any authorized campaign committee receives contributions of \$1,000 or more less  
16 than 20 days, but more than 48 hours, before any election in which the candidate is running, the  
17 committee must file special notices with the Commission within 48 hours of receipt of the  
18 contribution. 2 U.S.C. § 434(a)(6)(A). During O'Grady's campaign, the Committee failed to  
19 file 48-Hour notices for eight contributions of \$1,000 or more during the 48-Hour notice filing  
20 periods for the primary and general elections totaling \$85,000:

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<sup>5</sup> The complainant also asserts that in this report the Committee accepted several excessive contributions. That assertion is discussed *infra*.

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Contribution Type	Primary	General	Total
Loans from Candidate	\$50,000	\$20,000	\$70,000 <sup>6</sup>
Loans from Candidate's Spouse	--	\$10,000	\$10,000 <sup>7</sup>
Contributions from Individuals & PAC's	\$1,000	\$4,000	\$5,000 <sup>8</sup>
48-Hour Notices Not Filed	\$51,000	\$34,000	\$85,000

1 According to the Audit Report, in response to the recommendation in the interim audit report, the  
2 Committee stated that it was its understanding that these notices were filed; however, it could not  
3 produce evidence of these filings. At the exit conference, the candidate was informed of the  
4 failure to file these 48-Hour notices. The candidate stated that many of the other 48-Hour  
5 notices were filed properly and the non-filing of these notices was probably a reporting  
6 oversight.

7 Therefore, there is reason to believe that the Committee violated 2 U.S.C. § 434(a)(6)(A)  
8 by failing to file eight 48-Hour notices.

9 **5. Electronic vs. Paper Filing (MUR 5341)**

10 As of January 1, 2001, electronic filing became mandatory for a political committee that  
11 has, or has reason to expect to have, aggregate contributions or expenditures "in excess of" the  
12 "threshold amount" of \$50,000. 2 U.S.C. § 434(a)(11)(i); 11 C.F.R. § 104.18(a)(1); *see also*  
13 Federal Election Comm'n, *The Record*, Vol. 28, No. 4 (April 2002); Federal Election Comm'n,  
14 *The Record*, Vol. 28, No. 1 (January 2002). Once any political committee exceeds, or has reason  
15 to expect to exceed this threshold, all subsequent reports for the remainder of the calendar year

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<sup>6</sup> This amount included candidate loans made on 9/4/02 and 10/25/02, respectively.

<sup>7</sup> This amount is included in the total of contributions from the Candidate's spouse on 10/21/2002, discussed *infra*.

<sup>8</sup> These included contributions from Patricia Castel on 10/21/02, William Dal on 10/28/02, Paul Murphy on 10/22/02, James Sweeney on 11/1/02, and the Skin PAC on 10/24/02, each for \$1,000.

1 must also be filed electronically. 11 C.F.R. § 104.18(a)(2). Any report filed on paper will not  
2 satisfy the committee's filing obligations under section 434(a). *Id.*

3 The MUR 5341 Complaint alleges that the Committee ignored the requirement to file  
4 electronically. According to the complaint, even after the Commission notified the Committee  
5 of its failure to comply with this requirement, "the Committee has chosen to ignore the  
6 September 16, 2002 FEC telegram and remains in violation of the Act and all relative FEC rules  
7 and regulations." MUR 5341 Complaint at 2.

8 The Committee exceeded the electronic filing threshold amount of \$50,000 during the  
9 first quarter of 2002 when the Committee received the candidate loan of \$50,000 on March 22,  
10 2002, in addition to other contributions, totaling \$61,800. Thus, the Committee had the  
11 obligation to file all reports electronically with the Commission, beginning with its 2002 April  
12 Quarterly Report. The Committee, however, did not electronically file any report with the  
13 Commission until its 12-Day Pre-Primary Report on November 1, 2002. The Committee notes  
14 that it filed the 2002 July Quarterly Report on paper and filed it electronically "after being  
15 informed" of this requirement, and that it "took corrective action to insure future filings would be  
16 done electronically." Response at 2. Although the Committee contacted RAD and the electronic  
17 filing division for assistance in understanding how to file reports properly on December 5, 2002,  
18 it nevertheless did not file its 2002 April Quarterly Report and an amended 2002 July Quarterly  
19 Report electronically until February 10, 2004 and February 13, 2004, respectively, after the  
20 Commission completed its audit of the Committee.

21 Therefore, there is reason to believe that Friends of Marilyn F. O'Grady and Thomas  
22 Keller, as treasurer, violated 2 U.S.C. § 434(a)(11) and 11 C.F.R. § 104.18(a)(1) and (2).

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**D. Reporting Issues (2 U.S.C. § 434(b))**

MUR 5341 and the Final Audit Report allege several reporting violations by the Committee during 2002. The Committee admitted, both in response to the MUR 5341 complaint and the Commission's audit, that it may have violated several of the Commission's reporting requirements, claiming that some violations were due to "inexperience" and others were due to problems it had understanding how to use the FEC File software. MUR 5341, Committee Response at 1. The Committee has since filed, or is expected to file, amended reports to correct these errors.

**1. Candidate and Spousal Loans<sup>9</sup>**

A political committee must report any loans it receives and itemize them on Schedule A (Itemized Receipts), Line 13 (Loans). 2 U.S.C. § 434(b)(2)(G). It must disclose the total amount of loans made by or guaranteed by the candidate. 2 U.S.C. §§ 434(b)(2)(G) and (3)(E). It must continuously report the principal amount of each loan owed by the Committee on Schedule C (Loans) for all reporting periods, and continuously report existing debt on a separate schedule. 2 U.S.C. § 434(b)(8) and 11 C.F.R. §§ 104.3(d) and 104.11(a).

During 2002, the Committee received the following \$255,000 in loans from accounts of the candidate and her spouse:

Loans		
Lender	Date Incurred	Amount
Dr. Marilyn O'Grady	3/22/02	\$ 50,000
Dr. Marilyn O'Grady	6/29/02	\$ 50,000
Dr. Marilyn O'Grady	9/4/02	\$ 50,000

<sup>9</sup> The two loans from the candidate referenced in the MUR 5334 Complaint were for \$50,000 each and made on 3/22/2002 and 7/30/2002. The loan from the candidate referenced in the Final Audit Report was for \$40,000 and made on 10/21/2002. The two loans made by the candidate's spouse were the \$15,000 loan made on 10/04/2002 and the \$10,000 loan made on 10/21/2002.

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Dr. Marilyn O'Grady	9/9/02	\$ 20,000
Dr. John F. O'Grady	10/04/02	\$ 15,000
Dr. John F. O'Grady <sup>10</sup>	10/21/02	\$ 10,000
Dr. Marilyn O'Grady	10/21/02	\$ 40,000
Dr. Marilyn O'Grady	10/25/02	\$ 20,000
<b>TOTAL</b>		<b>\$ 255,000</b>

1  
2 The complaint in MUR 5341 alleged that the March 22, 2002 and June 29, 2002 loans  
3 were not listed on the appropriate form, but instead just as "normal contributions." MUR 5341  
4 Complaint at 1. With respect to the March 22, 2002 loan, instead of reporting it correctly on both  
5 Schedules A and C in the 2002 April Quarterly Report, the Committee initially reported it in its  
6 2002 July Quarterly Report, and only then on Schedule A. Likewise it reported the June 29,  
7 2002 loan in the 2002 July Quarterly Report only on Schedule A.<sup>11</sup> Schedule C only reflects an  
8 aggregate loan of \$100,000, but lists no other terms. Following the audit, the Committee  
9 electronically filed its 2002 April Quarterly Report on February 10, 2004, and amended its 2002  
10 July Quarterly Report on February 13, 2004, to correctly report the March 22 and June 29, 2002  
11 loans on both Schedules A and C. The Committee also failed to correctly report the September  
12 4, 2002 loan in its 2002 October Quarterly Report until the Committee electronically filed an  
13 amended report on February 13, 2004.

14 The Final Audit Report also includes a finding that the Committee failed to itemize the  
15 initial receipt of the October 21, 2002 candidate loan of \$40,000 and the October 4, 2002  
16 \$15,000 loan from the candidate's spouse on Schedule A, or on the Detailed Summary page of

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<sup>10</sup> The Committee initially reported the two loans from Dr. John O'Grady as coming from the candidate. *See infra*.

<sup>11</sup> The word "loans" is written next to these two contributions on Schedule A.

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1 the 12-Day Pre-General Report, and did not continuously report the principal amount of each  
2 loan owed on Schedule C for all appropriate reporting periods.<sup>12</sup>

3 Accordingly, there is reason to believe Friends of Marilyn F. O'Grady and Thomas Keller,  
4 as treasurer, violated 2 U.S.C. §§ 434(b)(2)(G), (3)(A) and (E) and 434(b)(8); and 11 C.F.R.  
5 §§ 104.3(d) and 104.11(a).

6 **2. Misstatement of Financial Activity**

7 The Act requires that reports filed with the Commission disclose the amount of cash on  
8 hand at the beginning and end of the reporting period; the total amount of receipts for the  
9 reporting period and for the election cycle; and the total amount of disbursements for the reporting  
10 period and for the election cycle. 2 U.S.C. §§ 434(b)(1), (2) and (4). Further, when operating  
11 expenditures to the same person exceed \$200 within an election cycle, the Committee must report  
12 the amount, date when the expenditures were made, name and address of the payee, and purpose  
13 of such operating expenditures. 11 C.F.R. § 104.3(b)(4)(i)(A).

14 During the audit, reported financial activity was reconciled to bank records for 2002,  
15 revealing discrepancies for receipts, disbursements and the ending cash balance on December 31,  
16 2002. Specifically, the Final Audit Report states that the Committee understated receipts by  
17 \$62,374, including \$55,000 in loans (\$40,000 from the candidate and \$15,000 from her spouse),  
18 and understated disbursements by \$89,425, including \$85,135 in media services. Some of the  
19 misstatement of financial activity resulted from the Committee's improper inclusion of some of  
20 the covered period for the 2002 October Quarterly Report in the 2002 12-Day Pre-Primary

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<sup>12</sup> Although the Committee never reported \$55,000 in receipts from the October 4 and 21, 2002 loans on Line 13 of the Detailed Summary Page for the 12-Day Pre-General Election Report, the Committee subsequently disclosed the \$40,000 loan from the candidate's personal funds on Schedule C of the 30-Day Post-General Report.

1 Report as well as in the 2002 October Quarterly Report, *see* discussion *supra*, causing a  
2 duplication of a portion of the reported financial activity on both the receipt and disbursements  
3 sides. In addition, some disbursements were not reported at all. These reporting errors and  
4 others, as well as the Committee's failure to carry forward the correct cash balance from the  
5 2002 12-Day Pre-Primary Report to the October Quarterly Report, contributed to the  
6 Committee's understatement of its December 31, 2002 ending cash balance by \$11,561.<sup>13</sup>

7 The complaint in MUR 5341 asserts that an expenditure listed in the Committee's  
8 12-Day Pre-Primary Report of \$25,602 to McLaughlin and Associates on August 30, 2002 for  
9 television ads appeared "to be inaccurate in two ways." MUR 5341, Complaint at 2. First,  
10 according to the complaint, the Committee aired television ads in July that "had to be paid for in  
11 advance," but no corresponding expenditure was listed in the Committee's reports filed with the  
12 Commission. *Id.* Second, the complaint asserts, the date of the disbursement matched the date  
13 the report was filed, August 30, 2002, and there is no reported cost to produce these ads in any  
14 report. *Id.*

15 The Committee's response states that "[I]f McLaughlin and Associates were to be  
16 contacted they will readily confirm the Committee's payment for their services." MUR 5341,  
17 Committee Response at 2. Although the complainant states generally that the television  
18 advertisements aired in July, the Committee's response neither denies this nor points to a "pre-  
19 July" disbursement. The Committee's response also states that the payments to McLaughlin and  
20 Associates were made to air television advertisements "produced by Warfield and Associates,"  
21 and that the Committee previously reported this disbursement. MUR 5341, Committee Response

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<sup>13</sup> In response to the interim audit report, the Committee amended its reports through 2002 to correct the misstatements.

1 at 1-2. The Committee's 2002 July Quarterly Report reflects an expenditure of \$8,308.31 to  
2 Warfield and Associates on April 1, 2002, for "102-Campaign Ads."

3 When the MUR 5341 Complaint was filed, the earliest reported disbursement to  
4 McLaughlin and Associates was August 30, 2002. However, the audit found that the  
5 Committee's misstated financial activity included its failure to report a \$12,235 disbursement to  
6 McLaughlin and Associates on June 21, 2002 – prior to the alleged airing of the July  
7 advertisements – as well as later payments to that company of \$36,450 and \$36,450 on October 4  
8 and October 11, 2002, respectively. When the Committee electronically filed its 2002 July  
9 Quarterly Report after the audit, it reported the June 21, 2002 disbursement. The Commission  
10 believes that it is likely that the June 21, 2002 disbursement to McLaughlin and Associates,  
11 reported after the complaint was filed, represents the "missing" advance payment for the  
12 advertisements referenced by the MUR 5341 complainant and that the Committee has belatedly  
13 identified the recipient of the payments for production of those advertisements.

14 Therefore, there is reason to believe the Committee violated 2 U.S.C. §§ 434(b)(1), (2)  
15 and (4) by misstating receipts, disbursements, and its ending cash balance on December 31,  
16 2002.

17 **E. Excessive and Prohibited Contribution Issues (2 U.S.C. §§ 441a, 441b)**

18 **1. Excessive Contributions from Spouse**

19 The Act prohibits individuals from contributing more than \$1,000 for each election to a  
20 federal candidate or candidate committee. 2 U.S.C. § 441a(a)(1)(A). This limitation applies  
21 even to family members or spouses. *See Buckley v. Valeo*, 424 U.S. 1, 51, n.57 (1976) ("[T]he  
22 immediate family of any candidate shall be subject to the contribution limitations established. . . .  
23 The immediate family member would be permitted merely to make contributions to the

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1 candidate in amounts not greater than \$1,000 for each election involved.”); MUR 5138  
2 (Ferguson) (discussing limitations on familial contributions). And a loan that exceeds the  
3 contribution limitations of 2 U.S.C. § 441a and 11 C.F.R. § 110 is unlawful whether or not it is  
4 repaid. 11 C.F.R. § 100.7(a)(1)(i)(A). The treasurer of a political committee is responsible for  
5 examining all contributions received for evidence of illegality and for ascertaining whether the  
6 contributions received, when aggregated with all other contributions from the same contributor,  
7 exceeds the contribution limitations set forth in the Act. 11 C.F.R. § 103.3(b).

8 Candidates and political committees are similarly prohibited from knowingly accepting  
9 contributions in excess of the limitations of section 441a. 2 U.S.C. § 441a(f). When a  
10 committee receives an excessive contribution, the committee must either refund the excessive  
11 portion of the contribution or the contributor must provide the committee with a redesignation or  
12 reattribution, both within 60 days after receipt of the contribution. 11 C.F.R. §§ 103.3(b)(3) and  
13 110.1(b)(3)(i). Political committees must also report contributions for the election to which they  
14 were made and identify each person who makes a contribution in excess of \$200 in a calendar  
15 year. 2 U.S.C. §§ 434(b)(2)-(3).

16 The Final Audit Report includes findings that the Committee may have received  
17 excessive contributions from the candidate’s spouse, Dr. John F. O’Grady. During October  
18 2002, the Committee received a total of \$25,000 in loans from a business bank account in Dr.  
19 John O’Grady’s name. These loans were made by two checks, one for \$15,000 on October 4,  
20 2002, and the other for \$10,000 on October 21, 2002, that were imprinted only with the name  
21 and credentials of Dr. John O’Grady as the account holder. The Committee reported these loans  
22 as made by the candidate from her “personal funds” and never reported them as contributions or  
23 loans from Dr. John O’Grady. *See* 2002 Amended (2/13/04) 12-Day Pre-General Election

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1 Report at 42; 2002 Amended (2/13/04) Post-General Report at 53; 11 C.F.R. § 110.10(b)  
2 (defining personal funds). During the audit the candidate stated that this account was maintained  
3 for the dental practice operated by her spouse, but claimed that she had a legal right to these  
4 loans under New York marital property laws as a joint asset.<sup>14</sup>

5 At the exit conference, the audit staff requested documentation to support the candidate's  
6 claim that the loan proceeds were her personal funds within the meaning of 11 C.F.R.  
7 § 110.10(b)(1). Subsequent to the exit conference, the candidate stated that she had attempted to  
8 obtain account information from the bank but was told that retrieving the records would be time  
9 consuming because the account was established long ago and before the bank changed  
10 ownership. The candidate provided a notarized letter from her spouse explaining that since the  
11 account represents income from his dental practice and is reportable as their combined income  
12 for federal taxes, it was their understanding that the funds were a joint asset and thereby  
13 permissible for use in the campaign.<sup>15</sup> *Id.* However, absent documentation to support the  
14 candidate's claim that the loans were from her "personal funds," and based on the checks  
15 themselves and the bank statements, the interim audit report recommended that the Committee  
16 refund \$23,000 to the candidate's spouse.

<sup>14</sup> Applicable New York marital property law does not support the candidate's contention that the funds in her spouse's account were joint assets. See N.Y. Dom. Rel. Law § 236; *In re Anjum*, 288 B.R. 72, 76 (Bankr. S.D.N.Y. 2003); *In re Lefrak*, 223 B.R. 431, 439 (Bankr. S.D.N.Y. 1998); *Leibowits v. Lebowits*, 93 A.D.2d 535, 549 (2d Dept. 1983). Furthermore, even if the funds used to make the loans did constitute "marital property" under New York law, Marilyn O'Grady would not have any *vested* right to such property, if it were titled in her husband's name, until the marriage is legally dissolved. *Id.*

<sup>15</sup> A candidate may use her "personal funds" to make a loan to her campaign committee if she had (a) legal right of access to or control over and (b) legal and rightful title or an equitable interest, as determined by "applicable state law." 11 C.F.R. § 110.10(b)(1). Accordingly, federal tax treatment of funds is not relevant. While the candidate may have an unvested equitable interest under (b), she still has no immediate legal right of access to or control over those funds as required under (a) and defined by state law. See footnote 14, *supra*. Therefore, she may not treat them as her "personal funds" pursuant to the Act and the Commission's regulations.

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1 In response to the recommendation in the interim audit report, the candidate reiterated her  
2 claim that the funds were her personal assets since they were reportable as combined income for  
3 federal income tax purposes. *Id.* Nevertheless, following the audit, because the Committee  
4 lacked sufficient funds to refund the excessive contribution, the candidate made a loan in the  
5 amount of \$23,000 from a joint checking account with her spouse to the Committee. *Id.*  
6 Thereafter, the Committee made a refund in the same amount to the candidate's spouse. *Id.*

7 Therefore, there is reason to believe that the Friends of Marilyn F. O'Grady and Thomas  
8 Keller, as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions, 2 U.S.C.  
9 § 434(b) for failing to properly report the spouse's excessive contributions, and 11 C.F.R.  
10 § 103.4(b)(4) for failing to keep sufficient funds to make a refund.

11 **2. Other Excessive Contributions (MUR 5334)**

12 The Complaint in MUR 5334 alleged that six individuals contributed in excess of the  
13 \$1,000 contribution limits in violation of 2 U.S.C. § 441a(a). MUR 5334, Complaint at 1. The  
14 Complaint further stated that "[i]n some instances, there is a notation that the excess has been  
15 allocated to the primary election" but that the Committee had reported no outstanding primary  
16 debt. *Id.* The contributors referenced by complainant were listed in the Committee's 12-Day  
17 Pre-General Election Report as follows:

Contributor	Primary Election (Date/Amount)	General Election (Date/Amount)	Notations
Lawrence Kadish	--	10/01/2002 \$2,000	\$1,000 allocated to primary
Susan Kadish	--	10/01/2002 \$2,000	\$1,000 allocated to primary
Baval Bernard	--	10/07/2002 \$2,000	\$1,000 allocated to primary
Charles Kadish	--	10/01/2002 \$2,000	--
Alexander [sic] Carew	--	10/07/2002 \$2,000	--
Nelson DeMille	10/07/2002 \$400	10/04/2002 \$1,000	--

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1  
2 In its response to the Complaint in MUR 5334, the Committee stated that each of the  
3 individual contributors "intended their contributions to be equally attributed to the primary and  
4 general elections," and that there was outstanding debt from the primary election in the form of  
5 candidate loans though none was initially reported.<sup>16</sup> MUR 5334, Committee Response at 1.  
6 Five of the individuals confirm in their responses to the complaint and in affidavits that it was  
7 their intent to have their \$2,000 contribution check either redesignated to reflect contributions to  
8 both the primary and general elections, or in the case of the Carews, to reflect a \$1,000  
9 contribution by each spouse. *See* Carew Response (Dec. 16, 2002)<sup>17</sup> and Kadish/Bernard  
10 Response at 2-5 (Jan. 16, 2003). The sixth individual contributor, Mr. DeMille, explained in  
11 response to the complaint that his excessive amount, a contribution of \$400, was paid toward a  
12 "cover charge" for himself and a guest to attend a private event for O'Grady with Susan Lucci,  
13 and that it was not intended to be a second contribution. DeMille Response at 2-3 (Dec. 13,  
14 2002).

15 Pursuant to the Act, an individual's contribution to a federal candidate or candidate  
16 committee is limited to \$1,000 per election. 2 U.S.C. § 441a(a)(1)(A). Candidates and political  
17 committees are similarly prohibited from knowingly accepting contributions in excess of the  
18 limitations of section 441a. 2 U.S.C. § 441a(f). Contributors are encouraged to designate their  
19 contributions in writing, 11 C.F.R. § 110.1(b)(2)(i); they can do so by clearly indicating on

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<sup>16</sup> According to the Committee's Amended 12-Day Pre-General Election Report, dated September 17, 2002, the Committee had over \$100,000 in outstanding candidate loans. The Committee also stated in its response that with respect to Baval Bernard, Alexandre Carew, and Charles, Lawrence and Susan Kadish, the contributions were misreported.

<sup>17</sup> The Committee's reports listed the contributor only as Alexander Carew. The MUR 5334 Complaint thus referenced a \$2,000 contribution reportedly from Alexander [sic] Carew. The Carew Response, however, states that there is no Alexander, only an Alexandre Carew. Carew Response at 1. The Carew Response then states that the contribution was from both Alexandre Carew and her husband, Raymond. *Id.*

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1 contribution checks the particular election for which the contribution was made, 11 C.F.R.  
2 § 110.1(b)(4)(i), or by including a "writing" with their contribution which clearly indicates the  
3 particular election with respect to which the contribution was made. 11 C.F.R. § 110.1(b)(4)(ii).  
4 However, in the event that a political committee receives an individual contribution up to \$2,000,  
5 before a primary election, the political committee has the option of requesting the contributor to  
6 redesignate, in writing, the excessive portion of the contribution (\$1,000) to the general election,  
7 in accordance with 11 C.F.R. § 110.1(5)(b). 11 C.F.R. § 110.1(b)(4)(iii). Committees are  
8 required to retain the written redesignations for three years. 11 C.F.R. § 102.9(c). The  
9 Committee failed to provide with its response copies of the checks in question or  
10 contemporaneous instruments of designation, redesignation, or reattribution.

11 Therefore, there is reason to believe that Friends of Marilyn F. O'Grady and Thomas  
12 Keller, as treasurer, violated 2 U.S.C. § 441a(f) for knowingly accepting a total of \$5,400 in  
13 excessive contributions, and 2 U.S.C. §§ 434(b)(2)-(3) for failing to identify each person who  
14 made a contribution in excess of \$200 in a calendar year.

### 15 3. Prohibited Corporate Contributions

16 Political committees may not accept contributions made from the general treasury funds  
17 of corporations. 2 U.S.C. § 441b. This prohibition applies to any type of corporation, including  
18 a non-stock corporation, an incorporated membership organization, and an incorporated  
19 cooperative. If a committee receives a contribution that appears to be prohibited, it must follow  
20 the procedures set forth at 11 C.F.R. § 103.3(b). Within 30 days of the treasurer's receipt of the  
21 questionable contribution, the committee must make at least one written or oral request for  
22 evidence that the contribution is legal, and must either confirm the legality of the contribution or

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1 refund the contribution to the contributor and note the refund on the report covering the period in  
2 which the refund was made. 11 C.F.R. § 103.3(b)(1).

3 The Final Audit Report includes findings that the Committee may have received 37  
4 prohibited contributions from 33 different corporate entities totaling \$9,195. At the exit  
5 conference, the audit staff provided the Committee with a list of those contributions. All but four  
6 of the corporations were registered with the State of New York. According to the Report, "[t]he  
7 candidate recognized many of the professional corporations on the list and stated that she had not  
8 known that contributions from such entities were prohibited. The candidate also stated that these  
9 contributors probably meant to make personal contributions but may have accidentally used their  
10 business checks." The candidate acknowledged to the audit staff that the Committee would  
11 contact the individuals to offer refunds.<sup>18</sup> Subsequently, the Committee provided documentation  
12 to support that it had made refunds to 20 entities totaling \$6,650. Prohibited contributions from  
13 13 entities totaling \$2,545 (\$9,195 - \$6,650) have not yet been refunded. Since these refunds all  
14 occurred outside the 30-day window, however, the Committee has improperly accepted  
15 corporate contributions with respect to both those that were refunded and those that were not.

16 Accordingly, there is reason to believe that Friends of Marilyn F. O'Grady and Thomas  
17 Keller, as treasurer, violated 2 U.S.C. § 441b by accepting prohibited contributions totaling  
18 \$9,195.

19 **F. Disclaimer Issue (2 U.S.C. § 441d) (MUR 5341)**

20 Pursuant to 2 U.S.C. § 441d(a) of the Act, "whenever any person makes an expenditure  
21 for the purpose of financing a communication expressly advocating the election or defeat of a

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<sup>18</sup> The Committee did not establish a separate account for questionable contributions and did not maintain a sufficient balance to refund impermissible contributions for the period after October 7, 2002. 11 C.F.R. § 103.4(b)(4).

1 clearly identified candidate," such communication must include a disclaimer clearly stating the  
2 name of the person who paid for the communication and indicating whether the communication  
3 was authorized by any candidate or candidate's authorized committee. 2 U.S.C. § 441d(a).  
4 Expressly advocating means "any communication that – (a) Uses phrases such as "vote for the  
5 President" . . . which in context can have no other reasonable meaning than to urge the election  
6 or defeat of one or more clearly identified candidate(s)." 11 C.F.R. § 100.22(a).

7 According to the complaint in MUR 5341, on or about October 1, 2002, Charles  
8 Mansfield, "Chairman" of "Alumni for O'Grady," allegedly distributed a letter (attached to the  
9 complaint) to "more than fifty people who were alumni of Chaminade High School in Mineola,  
10 New York." The letter lists the address, email address, and website address of the Committee,  
11 and complainant alleged the letters were mailed in envelopes using the Committee's address as  
12 the return address, "and presumably paid for by the Committee," though none of those envelopes  
13 were provided in the complaint. The letter urges the recipient "and the voters in [their] family to  
14 vote for Marilyn O'Grady on November 5<sup>th</sup>," and to "write a check for \$250 or more payable to  
15 Friends of Marilyn F. O'Grady, and mail it to the above address without delay." The letter also  
16 states that the writer and candidate's spouse are alumni of the Chaminade High School. The  
17 letter had no disclaimer.

18 In his response, Mr. Mansfield stated that he composed the letter as a "volunteer" with  
19 the Committee, but that he did not "distribute" it; that the mailing of the letter was "handled by  
20 other campaign workers and volunteers;" and that the disclaimer was "inadvertently left off the  
21 letter; its omission from the letter was beyond my control." Mansfield Response (December 13,  
22 2002). In its response, the Committee conceded that the letter, "in retrospect, should have stated  
23 'Paid for by Friends of Marilyn F. O'Grady' because it may have gone to more than 100

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1 individuals." MUR 5341, Committee Response at 2 (December 19, 2002). The Committee  
2 requested that "any further issues with Mr. Mansfield's letter be directed to the Committee and  
3 not Mr. Mansfield" because he volunteered in helping O'Grady "run for political office."

4 Since the letter contains a solicitation and an exhortation to vote for O'Grady, *see*  
5 11 C.F.R. § 100.22(a), and the Committee indicates it authorized and paid for the letter, and does  
6 not contest that it may have been sent to more than 100 individuals, the letter should have  
7 contained a disclaimer stating that it was paid for by the Committee. *See* 2 U.S.C. § 441d;  
8 11 C.F.R. § 110.11(a)(3). Therefore, there is reason to believe that Friends of Marilyn F.  
9 O'Grady and Thomas Keller, as treasurer, violated 2 U.S.C. § 441d(a)(1).

10 **G. Issues Relating to the Leaflet (MUR 5334)**

11 According to the complaint in MUR 5334, during the general election campaign period,  
12 the Committee distributed 50,000 copies of a four-page advertisement (attached to the  
13 complaint) throughout New York's 4<sup>th</sup> Congressional District. The leaflet is printed on  
14 newsprint measuring 15 inches by 11 inches, and states therein that "[o]ver 50,000 of these  
15 circulars" were "left at homes and offices throughout the 4<sup>th</sup> Congressional District by hundreds  
16 of volunteers who believe that Marilyn O'Grady Can Make A Difference." On the first page of  
17 the leaflet, a picture of O'Grady is juxtaposed with her campaign logo, followed by the words,  
18 "Vote for Dr. Marilyn O'Grady," as well as several other statements expressly urging support of  
19 O'Grady. The leaflet contains many photographs of O'Grady campaigning which are similar to  
20 those that were found on the Committee's website. Some photographs in the leaflet were the  
21 same as those found on the website but were cropped differently (both narrower and broader),  
22 and others were different photographs but clearly from the same photographic event or series.  
23 Attachment 1. The leaflet ends with the statement, "VOTE FOR MARILYN O'GRADY ON

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1 ELECTION DAY NOVEMBER 5, 2002 AND HELP HER MAKE A DIFFERENCE." The  
2 leaflet contains no disclaimer.

3 In her response to the MUR 5334 complaint on behalf of herself and the Committee, the  
4 candidate stated:

5 [N]either I nor anyone connected to my campaign committee authorized such an  
6 advertisement. In addition, the advertisement in question was not paid for by my  
7 committee and whomever is responsible for the advertisement did not coordinate  
8 at all with me or my campaign committee at any time prior to or after its airing.  
9 As such, the Commission would consider the advertisement . . . an independent  
10 expenditure and my campaign committee would have no obligation to report it.

11 MUR 5334, Committee Response at 1 (Dec. 18, 2002). Notwithstanding this denial, however,  
12 the Commission cannot rule out that someone associated with the Committee had a role in the  
13 production of the leaflet. *See* 11 C.F.R. § 100.23(c).

14 The Act provides that expenditures made "in cooperation, consultation, or concert, with,  
15 or at the request or suggestion of, a candidate, his authorized political committees, or their  
16 agents, shall be considered to be a contribution to such candidate . . . ." 2 U.S.C.

17 § 441a(a)(7)(B)(i). *See also Buckley v. Valeo*, 424 U.S. 1, 46 (1976) ("controlled or coordinated  
18 expenditures are treated as contributions"); 11 C.F.R. § 100.23 (defining coordinated general  
19 public political communications); *FEC v. Christian Coalition*, 52 F. Supp. 2d 45, 92 (D.D.C.  
20 1999) (setting the standard which the Commission used for addressing potential coordination  
21 claims pre-BCRA).<sup>19</sup>

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<sup>19</sup> BCRA repealed 11 C.F.R. § 100.23 and on December 5, 2002, the Commission approved new coordination regulations. Newly promulgated 11 C.F.R. § 109.20(a) defines "coordinated" to mean "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, the candidate's authorized committee, a political party committee, or the agents of any of the foregoing."



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1           The Commission's concern about possible coordination involving the Committee  
2 emanates from the presence of certain photographs in the leaflet that were apparently not located  
3 in the public domain, raising the possibility that such photographs were not available to anyone  
4 outside the Committee. It is possible that someone could have copied an electronic image from  
5 the Committee's website and pasted it in the leaflet without the participation of the Committee,  
6 even if the image is cropped smaller in the leaflet, such as the Netanyahu and Cheney  
7 photographs. Attachment 1 at 4. However, the same cannot be said of images that are cropped  
8 smaller on the Committee's website and appear uncropped in the leaflet, such as the "O'Grady  
9 with supporters" photograph, *id.* at 1, or of photographs that are not on the website at all but  
10 appear to be from similar settings and poses, including the "Stewart Manor" fire truck, *id.* at 3,  
11 "Rockville Centre" lectern, *id.*, and "O'Grady in her Office" photographs, *id.* at 2. Thus, it  
12 appears that someone connected with the Committee may have provided these photographs to a  
13 third party. If so, the Committee may have coordinated the production of the leaflet. If the  
14 leaflet was coordinated with the Committee, the Committee may have accepted excessive in-kind  
15 contributions in violation of 2 U.S.C. § 441a(f) or prohibited corporate contributions in violation  
16 of 2 U.S.C. §441b(a), depending on the person or entities who prepared the leaflet, and the costs  
17 associated with its preparation and distribution.

18           Therefore, there is reason to believe that Friends of Marilyn F. O'Grady and Thomas  
19 Keller, as treasurer, violated 2 U.S.C. §§ 441b(a) and 441a(f).

20  
21 Attachment:

- 22       1.     O'Grady Committee Website vs. Leaflet – Image Comparison  
23

## O'Grady Committee Website vs. Leaflet – Image Comparison



O'Grady Campaign Logo: left image on Committee's website. Similar logo on right used in leaflet, page 1. Same design, but different fonts.



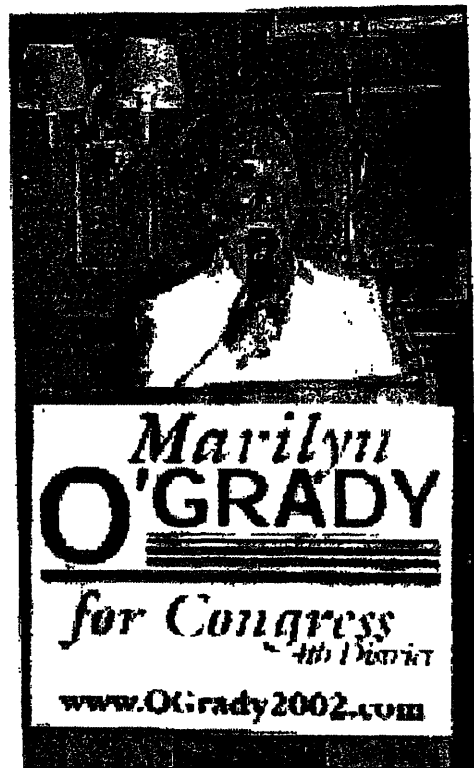
Marilyn O'Grady with supporters: left photo on the Committee's website ("Issues" page). Same photo is in the leaflet, page 2. The leaflet photo is not cropped as narrowly as the website photo.



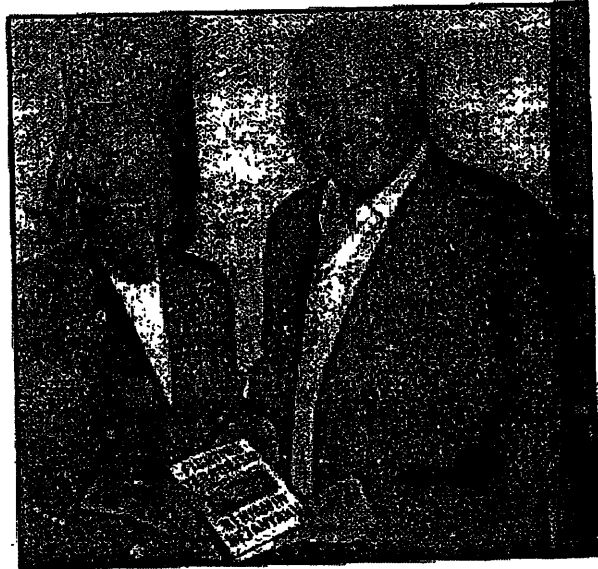
**Marilyn O'Grady in her Office:** left photo on Committee's website ("Biography" page). Similar photo in the leaflet, page 3, with same pose, outfit, and location, but the leaflet photo is not cropped and it is from a different angle.



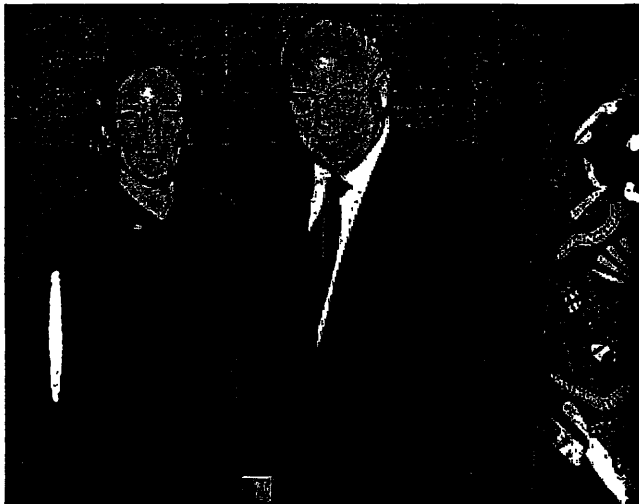
Marilyn O'Grady at campaign event at Stewart Manor w/fire truck: left photo on Committee's website (linked from "Campaign Trail" page: [www.ogrady2002.com/stewart.html](http://www.ogrady2002.com/stewart.html)). Photo on right in leaflet, page 3, with same outfit, exteriors, and location.



Marilyn O'Grady at campaign event at Rockville Centre: left photo on Committee's website (linked from "Campaign Trail" page: [www.ogrady2002.com/news2.html](http://www.ogrady2002.com/news2.html)). Photo on right in leaflet, page 4, with same outfit, interiors, and location.



**Marilyn O'Grady with former Israeli Prime Minister Benjamin Netanyahu:** left photo on Committee's website. Same photo used in leaflet, page 4. The leaflet photo is cropped smaller than the website photo.



**Marilyn O'Grady with Vice President Dick Cheney:** left photo on Committee's website. Same photo used in the leaflet, page 4, but misspelled as "Chaney." The leaflet photo is cropped shorter than the website photo.